(1)- D.B. CIVIL SPECIAL APPEAL (W) NO.281/2005
(U.O.I. Vs. M/s M.Processing House P.Ltd. & Ors.)

(2)- D.B. CIVIL SPECIAL APPEAL (W) NO.466/2007
(R.F.C. Vs. M/s M. Processing House P.Ltd. & Ors.)

(3)- D.B. CIVIL SPECIAL APPEAL (W) NO.467/2007
(State Vs. M/s M.Processing House P.Ltd. & Ors.)

Date of Order :: 25.4.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. Vineet Kumar Mathur, for the appellant/s.
Mr. LR Upadhyaya, Deputy Govt. Advocate.
Mr. Anjay Kothari) for the respondent/s
Mr. NS Rajpurohit for Mr. SG Ojha)

Heard learned counsel for the parties.

These three appeals have been filed against the very same judgment of the learned Single Judge by three different parties. The respondent No.1 got itself registered as the District Industries Centre, Balotra on 18.4.1988 for the purpose of setting up a new industrial unit at Balotra and regular commercial production commenced on 10.6.1989.

For the present purpose, necessary facts we may notice, and about which there is no disputes, between the parties, are that at the time when the respondents-petitioners set up the new industrial unit, the scheme floated by the

Central Government vide Notification dated 26.8.1971 as amended from time to time for grant of central subsidy for industrial units to be set up in certain selected backward district/areas was in force. The scheme of the said Central subsidy was in force until 30.9.1988.

The respondent Industrial Unit moved an application before the competent authority for grant of Central subsidy in terms of conditions laid under the aforesaid scheme.

Under the aforesaid scheme, the new industrial unit was defined to mean 'an industrial unit' for the setting up of which effective steps were not taken prior to 1.10.1970 and 'existing industrial unit' means an industrial unit for the setting up of which effective steps were taken prior to 1.10.1970. It also defined what is meant by taking effective steps under Clause 4(e) it would mean one or more of the following steps :-

(i)- that 60 per cent or more of the capital issued for the industrial unit has been paid up, or

(ii)- that a substantial part of the factory building has been constructed, or

(iii)-that a firm order has been placed for a substantial part of the plant and machinery required for the industrial unit.

On fulfillment of either of conditions it was taken to mean effective steps have been taken for the setting up of the new industrial unit.

Under the scheme, separate disbursing agencies were envisaged for the purpose of those industrial units which availed the loan from Government Central / State or the financial institution and those industrial units which were to be set up without assistance from the financial institution of the State Government / Union Territory Administration concerned, but were having a total fixed capital investment of not more than Rs.50 lakhs.

The fact that the respondent-petitioner has taken effective steps for setting up of new industrial unit before closure of the scheme is not in dispute. The fact that the petitioner has applied for loan from the financial institution but the same was not sanctioned until 30.9.1998 is also not a fact in dispute. Since loan had not been sanctioned until that date, the question of

annexing the certificate of sanctioned loan amount with the application for grant of subsidy could not and did not arise.

Alongwith the scheme issued vide Notification aforesaid the manual for 10% to 15% Central Investment subsidy was also issued by the Central Government in which it was envisaged under Clause 1.2 that it will apply to the industrially backward districts / areas which qualify for the Central Investment Subsidy as per list annexed to the manual. The industry of the petitioner-respondent was set up in one of the said backward districts is also not a fact in dispute.

We have already noticed that the scheme commenced on 1.10.1970 and closed on 30.10.1988. The important for the present purposes to be noticed is the eligibility of the industrial unit for availing the central investment subsidy which was laid in paras No. 2.1 and 2.2 of the manual, is reproduced as under :-

> "2.1- New industrial units engaged in manufacture of items specified in part (B) of Annexure II are eligible to claim 10%-15% Central Investment Subsidy under the scheme provided such industrial units are located in areas specified in part (A) of annexure II and are also covered by Section 1.3 above. Existing industrial units engaged in manufacture of

items specified in part (B) of Annexure II are eligible to claim 10% - 15% Central Investment Subsidy under the scheme provided such industrial units are located in areas specified in part (A) of Annexure II and are also covered by Section 1.3 above for purposes of expansion only.

2.2- Condonation of delays in registration : State Level Committee may at its discretion waive the condition of prior registration with State Industries Department / Director of Industries if it is satisfied that there are sufficient reasons to do so."

There is no dispute about the fact that the respondent industrial unit fulfilled these criteria also.

Para No. 2.3 laid down the procedure for claiming subsidy, which is reproduced as under :-

"Procedure for claiming subsidy:

2.3- The following information and documents should be submitted along with the application (form prescribed in Annexure III) for claiming Central Investment Subsidy under the Scheme :-

(a)- Project report wherever it is prepared.
(b)- Details of the scheme including the details of the fixed assets to be acquired.
(c)- Sanction letter from the financial institution(s) sanctioning the loan or loans for the purpose of implementing the project.
(d)- If the project is under implementation a certificate from the Chartered Accountants regarding

> capital expenditure incurred on the project and a certificate from an Engineer as prescribed in Section 5 (6)(b) certifying the civil work done. These certificates should be in the prescribed form (vide Annexure VI & VII)."

Clause (a), (b) and (d) were all complied well before the date of closure of the scheme and the application of the petitioner-respondent except the sanction letter from the financial institutions sanctioning the loan or loans for the purpose of implementing the project was not enclosed with the application.

The application was to be scrutinized for sanctioning the grant of Central Investment subsidy by the State Level Committee constituted under Clause (4) of the manual.

Under the scheme the financial institution where the industry is to be set up in the backward area has availed the loan facility from the financial institution. Such institution was itself declared designated as a disbursing agency. In the present case, the Rajasthan Financial Corporation (RFC) was the financial institution to which the petitioner had applied for loan. The loan was sanctioned on 30.11.1988. On sanctioning of loan it also became the disbursing agency through which the Central

Investment Subsidy in terms of the scheme, was ultimately to be disbursed.

Had the RFC not sanctioned the loan, the petitioner - respondent was still eligible to subsidy as self financed industry.

In the aforesaid state of affairs when the petitioner's application for the Central Investment Subsidy scheme was not considered by the State Level Screening Committee, the petitioner moved a writ petition seeking mandamus for considering his application. The said S.B. Civil Writ Petition No. 1625/97 was decided by order dated 16.7.1998 and the respondents were directed to consider the application of the petitioner for grant of subsidy in view of the Hon'ble Division Bench judgment of the Court in D.B. Special Appeal No. 1036/97 dated 1.10.1997. In that case the plea of the respondents in general was that since the scheme had expired on 30.9.1988, the State Level Screening Committee become functus officio and could not have considered the application after expiry of the scheme. That view was not upheld by the Court and, the directions were issued by the Hon'ble Division Bench that the pending applications if filed before September 30,1988 be considered for grant of subsidy under the Central Investment

Subsidy Scheme, 1971 as modified from time to time provided the application moved by the appellant is complete as per the scheme.

The present appellant had filed an appeal against the direction of the learned Single Judge dated 16.7.1998. The said special appeal was dismissed by the Hon'ble Division Bench by order dated 27.3.2001.

The industrial department vide its communication dated 15.10.2001 recommended for grant of application of petitioner for subsidy by clearly making out a case that the claimant had done all he could do in the matter of filing application acquiring eligibility criteria and also making an application for grant of loan in time. The delay in granting loan was attributed solely on the RFC and therefore, that should not be held against the applicant. However, the application of the applicant-petitioner was rejected by State Level Screening Committee solely on the ground that since the sanction of loan by RFC was after 30.9.1988 and the loan sanction certificate was not attached with the application, the application filed on 20.6.1988 was not complete and was not liable to be considered after expiry of the scheme.

This led to filing of S.B. Civil Writ Petition No. 3508/2002, out of which this appeal has arisen.

Learned Single Judge noticing the aforesaid facts allowed the writ petition by holding that seeking loan from the financial institution and annexing the sanction letter of loan was not an essential condition for grant of subsidy and there being no default on the part of the applicant, the subsidy could not be denied on that ground. In other words, the subsidy could not have been denied on the ground of procedural technicality which did not effect the substantive condition of the grant of subsidy. In view thereof, the writ petition was allowed. The order dated 17.1.2002 (Annex.5) and the order dated 24.1.2002 (Annex.6) denying the subsidy benefit to the petitioner were quashed and set aside. The respondents were directed to give benefit of the scheme to the petitioner and disburse the subsidy amount within a period of two months from the date of receipt of the certified copy of the order. One appeal before us is by the State of Rajasthan and another is by Union of India and third is by the Rajasthan Financial Corporation.

We have already noticed so far as industrial department of the State is concerned,

it has supported initially the case of the respondent-petitioner for grant of subsidy.

The contention of learned counsel for the appellants in all these appeals, one by Union of India and others by State of Rajasthan and R.F.C. is singularly founded on the ground that since the sanction letter from the financial institution sanctioning the loan or loans for the purpose of implementing the project under para No.2.1 of the manual referred to above laying down the procedure for claiming subsidy was an essential formality to complete application where the grantee was to avail loan from the financial institution was necessary and on that mandate application was rightly rejected. In fact, only those pending applications were required to be considered after 30.9.1988 which were complete in all respects.

For this reliance was placed by the appellants on the judgment of the Hon'ble Supreme Court in Umasha Textile and Anr. Vs. Union of India and Anr. 1997(10) SCC Pg.765, in which the Hon'ble Supreme Court has observed as follows :-

> "We agree with her that all the applications filed up to 30.9.1988 should be considered for grant of Central investment subsidy provided the said applications

> were complete in terms of the scheme dated 26.8.1971 as modified from time to time."

These directions were issued by the Hon'ble Supreme Court after referring to the report submitted by Mr. Pratibha Karan, Joint Secretary, Ministry of Industry, Central Government dated 16.11.1995 to whom the matter has been earlier referred.

The directions issued by the Division Bench of this Court were also in consonance with the aforesaid directions.

Learned counsel for the petitioner-applicant has drawn our attention to the group of orders quoted under caption Union of India Vs. Agro Engineering (MP) Pvt. Ltd. and Ors. 1997 (10) SCC 762 of which Umasha Textile's case was also a part and urged that the respondent-petitioner having made substantive compliance of the eligibility criteria and moved an application complete in all respects which could be completed by the petitioner on the date he moved an application and the fact that taking of the loan from the financial institution was not essential condition for claiming subsidy. In terms of decision rendered in State of M.P. and Ors. Vs. Agro Engineering (M.P.) Pvt. Ltd. and

ors. a part of the same group of decision reported under the above captioned citation, the petitioner-respondent is entitled to claim subsidy and the learned Single Judge has not committed error while allowing the writ petition.

Having considered the group of decisions reported at 1997(10) SCC 762 we are of the opinion that these appeals must fail.

From perusal of the above decisions, it appears that in group of cases before the Hon'ble Supreme Court about the grievance of the industries that they have not been disbursed the subsidy to which they were entitled to under the Central Outright Grant Subsidy Scheme, 1971 for industrial unit set up in the selected backward areas the appeals had arisen from the judgments of the High Court. Some of them had been granted subsidy in terms of said order. But all those matters arose out of the applications that remained pended on the expiry of the scheme.

Considering the claim of the industries of the various categories, the Hon'ble Supreme Court was of the view that in the interest of justice all the industries should make a representation before Mrs. Pratibha Karan, Joint Secretary, Ministry of Industry under Department

of Industrial Development, Udhyog Bhawan, either jointly or severally within three weeks from the date of order. The name of the officer was suggested by the learned Additional Solicitor General after consulting the Government of India. It further directed that the representations be decided within 8 weeks thereafter.

It is in the aforesaid circumstances, on receiving the order of said Mrs. Pratibha Karan, the Court passed the order referred to above in Umasha Textile and Anr. Vs. Union of India and Anr. Decided on 5.12.1995. This decision has been reported as item No.3 below the judgment rendered in Union of India Vs. Agro Engineering (MP) Pvt. Ltd. and Ors. which was decided later on 9.2.1996.

The first judgment which has been reported in this connection under the aforesaid group of judgment is in another case of State of M.P. and Ors. Vs. Agro Engineering (M.P.) Pvt. Ltd. and Ors. decided on 1.11.1995. This appeal had arisen from the judgment of M.P. High Court which has been disposed off along with the writ petition filed by M/s Agro Engineering (M.P.) Pvt. Ltd. in the light of its earlier judgment in Shri Bajrang Extraction (P) Ltd. Vs. Secy., Govt. of M.P. reported in AIR 1993 MP 202, the M.P.

High Court has given the following directions :-

> "(a)- The State of M.P. shall renominate or revivify (revive) the State Level Committee or constitute any other authority to decide the applications of the petitioners on merits on the basis of acquisition of eligibility qualifications before the expiry date of the scheme, i.e., 30.9.1988 within a period of four months from today."

It has also directed vide Clause (d) of the direction issued by the M.P. High Court that the Union of India shall reimburse the equivalent amount without unnecessary delay to State of M.P. once the subsidy is disbursed by it to the eligible petitioners.

Considering the aforesaid direction of the M.P. High Court, the Hon'ble Supreme Court explained the revised direction as under :-

> "We do not think that there can be any quarrel with the direction (a) given by the High Court. The direction (a) says that the State Level Committee shall be revived or any other authority constituted to discharge the work which the said committee was supposed to discharge under the said scheme. Such a committee, or the authority, as the case may be, was directed to examine the applications of the petitioners on merits <u>on the basis of eligibility qualifications before the scheme expired on 30.9.1998. It means that only those units/industries which have</u>

> acquired the eligibility qualifications before the said date were held eligible for the financial assistance thereunder, but not others."

> "This was indeed, the direction given by the Division Bench earlier in Bajrang Extraction. In this behalf, it is well to remember the distinction between "substantive and mandatory requirement" and "formal and procedural requirement" pointed out by this Court in Mangalore Chemicals and Fertilisers Ltd. V. Dy. Commr. of Commercial Taxes 1992 Supp (1) SCC 21 – a decision which deals with a similar exemption notification."

This judgment was rendered by the Hon'ble Supreme Court on 1.11.1995 after the decision in Umasha Textile and Anr.

The second judgment in the cluster of judgments annexed with the main judgment reported in the aforesaid report was on an appeal preferred by the Union of India against Aarbee Pipe and Profiles and Ors. which came to be decided on 1.2.1996 with the following order :-

> "In view of the decision of this Court in State of M.P. v. Agro Engineering (MP) (P) Ltd. and another judgment of this Court in Umasha Textile v. Union of India dated 5.12.1995, we see no reason to entertain this petition. The authorities will, therefore, take appropriate action in accordance with the ratio in the aforesaid two

> decisions. The special leave petition is disposed of accordingly."

These three decisions leave no room of doubt that those industries which had acquired eligibility for claiming subsidy prior to 30.9.1988 substantively were entitled to be considered for eligibility if the applications have been made earlier thereto and that such eligibility claim to subsidy shall not be defeated only on account of procedural ground.

This principle was reiterated in the principal judgment reported in the aforesaid report where the Hon'ble Supreme Court said :-

> "The substratum of the directions in all those cases is that if the applications are made on or before 30.9.1988 substantially complying with the requirements enumerated in the guidelines issued by the Government of India, they would be considered and disposed of for granting subsidy as per the scheme. The same should be the order in this case."

Thus the ratio was clearly laid that what was required to be complied with by the claimant for subsidy, was substantively complying with the requirements enumerated in the guidelines issued by the Government of India and not the literal compliance of procedure that was

stated in the scheme. Necessarily this exercise is required to be completed also by the claimant for grant of the subsidy.

Taking into consideration the aforesaid ratio of the Hon'ble Supreme Court decision, it is apparent that so far substantive eligibility criteria is concerned, the respondent-petitioner had acquired the same before the expiry of the scheme. That is to say getting itself registered with the District Industries Centre, taking effective steps for setting up the industry in the backward area which was listed amongst eligible area within which the new industrial unit was to be set up and has made substantial investment for setting up the industry in the industrial area. The fact that such industry should be set up by the aid of financial institution or by self-generated resources is not an essential condition for eligibility to claim subsidy. It only relates to identify the agency through which the subsidy is to be disbursed, but has nothing to do with substantive criteria of eligibility which remain unaffected by the fact of agency who finances the industry.

In the present case, the RFC has ultimately allowed the application of the petitioner-respondent by sanctioning the loan

after expiry of scheme. The delay was attributed to the RFC itself as per the opinion of the industry department but assuming the RFC would have refused to grant the loan and left the petitioner to own resources, it would not have rendered the respondent-petitioner ineligible to claim the subsidy under the Central Subsidy Scheme. In that event subsidy would have been directly disbursed to the claimant and not through the financial institution, who could have appropriate the same towards repayment of loan.

This is clear pointer of fact that obtaining the loan or attaching the sanction letter of the financial institution was not an essential pre-condition for sanction or even grant of subsidy. The grant of loan by financial institution would have only affected the subsequent aspect of manner of disbursing the subsidy and that stage could reach only after the sanction of the subsidy. Non-sanctioning of financial assistance by the financial institution before expiry of the scheme would not have affected the decision to grant subsidy. The quantum of subsidy would not have been effected by availing loan or not availing the loan by the industry set up a new industrial unit in the backward area.

Therefore, so far the State Level Committee is concerned, it was only to consider the eligibility of industrial unit to subsidy and quantum of subsidy to be granted. It had nothing to do with the sanction of financial institution. It is only after the applicant was found eligible and subsidy is sanctioned that the matter would reach the stage to identify the disbursing agency of the subsidy. If the loan is sanctioned in favour of the industry by the financial institution, the institution granting loan will become the disbursing agency. In other case 85% subsidy would be disbursed immediately and 15% subsidy were to be disbursed only after industrial unit commenced production.

Since by the date the application was actually considered by the State Level Committee, after the direction of this Court, the loan in favour of petitioner had been sanctioned and certificate of sanction of loan was also before the committee which could only be relevant for identifying that of otherwise subsidy is sanctioned, who would be its disbursing agency. But as on the date application was moved by the industry when it had fulfilled all conditions for laying claim to subsidy the application of petitioner for availing loan had not been disposed off and was pending. It was impossible

to enclose with the application, the certificate of sanction of loan by R.F.C., Non-fulfillment of an impossible procedural requirement for the purpose subsequent to sanctioning of subsidy, could not be a ground to refuse the subsidy. It would be denying the benefit on formal procedural requirement having no bearing on substantive aspect of the matter and could not have been a ground of rejection.

Therefore, Single Judge was right in considering the non-submission of the sanction letter from the financial institution as on the date of making of application merely of procedural and technical nature and in reaching the conclusion that the respondent-petitioner had completed substantive requirement for claiming subsidy. Thus, no interference is called for in the judgment under appeal.

All the appeals, therefore, fail and are hereby dismissed. There shall be no order as to costs.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

/rm